

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK, NEW JERSEY

DAVID P. TARINO,

Docket No.: 07 CV 5505(JAG)(MCA)

Plaintiff,

NOTICE OF MOTION

-against-

LOS ANGELES AIRPORT MARRIOTT HOTEL,

Defendant.

MOTION BY:

GARBARINI & SCHER, P.C.
Attorneys for Defendant
MARRIOTT INTERNATIONAL, INC. s/h/i/a LOS
ANGELES AIRPORT MARRIOTT HOTEL

DATE AND PLACE OF
HEARING:

December 24, 2007 at 10:00 a.m.
United States District Court, District of New Jersey
Newark, New Jersey

RELIEF DEMANDED:

- (1) An Order pursuant to 28 USC 1404 (a) transferring this action to the United States District Court for the Southern District of California
- (2) Such other and further relief as this Court may deem appropriate in the premises.

SUPPORTING PAPERS:

Affidavit of WILLIAM G. SCHER, Brief, Proposed Order, and Exhibits.

Dated: Hackensack, NJ
December 5, 2007

Yours, etc.
GARBARINI & SCHER, P.C.

By:

/s/

WILLIAM G. SCHER (WS 2891)
Attorneys for Defendant
MARRIOTT INTERNATIONAL, INC. s/h/i/a
LOS ANGELES AIRPORT MARRIOTT HOTEL
25 Main Street, Suite 600
Hackensack, NJ 07601-7025
(201) 343-2002

TO:

DAVID P. TARINO
Plaintiff Pro Se
366 Sutton Avenue
Hackensack, NJ 07601
(201) 487-2389

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK, NEW JERSEY

DAVID P. TARINO,

Docket No.: 07 CV 5505(JAG)(MCA)

Plaintiff,

AFFIDAVIT IN SUPPORT

-against-

LOS ANGELES AIRPORT MARRIOTT HOTEL,

Defendant.

STATE OF NEW JERSEY)

SS:

COUNTY OF BERGEN)

WILLIAM G. SCHER, an attorney duly admitted to practice law before the Courts in the State of New Jersey and before the United States District Court for the District of New Jersey, a member of the law firm of GARBARAINI & SCHER, P.C., attorneys for defendant, MARRIOTT INTERNATIONAL, INC. s/h/i/a LOS ANGELES AIRPORT MARRIOTT HOTEL (hereinafter “MARRIOTT”) in this action, makes the following statements upon information and belief under penalties of perjury such statements being based upon the papers contained in the file maintained by said defendant’s aforesaid attorneys.

1. This Affidavit is respectfully submitted on behalf of defendant, MARRIOTT seeking transfer of this matter to the United States District Court for the Southern District of California pursuant to 28 USC 1404(a) and the underpinnings of the doctrine of *forum non conveniens*, along with such other and further relief as this Court may deem appropriate in the premises.

2. This action was commenced through the filing of a Complaint with the Supreme Court of New Jersey, County of Bergen on or about October 5, 2007 . A copy of such Summons and Complaint is attached as Exhibit “1”. This matter was timely removed to this Court pursuant to 28 U.S.C. §§ 1332 and 1441 in light of full diversity of citizenship as and between the parties. A copy of such Removal Petition is attached hereto as Exhibit “2”.

FACTUAL BACKGROUND SUPPORTING TRANSFER OF VENUE

3. A review of plaintiff’s Complaint reveals allegations that on or about October 5, 2005 plaintiff, DAVID P. TARINO allegedly sustained injury while present at defendant’s hotel facility in Los Angeles, California. Plaintiff alleges that he “was assaulted by a felon brandishing his automatic 9 mm weapon”. Further, plaintiff alleges that this felon was “served alcohol by MARRIOTT extensively” and that MARRIOTT turned over plaintiff’s personal information to the authorities without his consent. See Exhibit “1”.

4. Jesus Barrios, an off-duty Yuba City police officer, was arrested at the Los Angeles MARRIOTT for assault with a deadly weapon (loaded handgun) and for sexual battery. Mr. Barrios allegedly pointed a loaded handgun at several MARRIOTT guests on October 5, 2005. The alleged assault, which is the subject of this litigation, occurred in the lobby of the Los Angeles MARRIOTT while plaintiff was a guest in the hotel.

5. Multiple witnesses have been identified in the criminal investigation; all of whom are citizens and residents of California. One witness, Azeeda Beech, a California resident and MARRIOTT employee, was checking plaintiff into the hotel at the front desk when Mr. Barrios approached her and plaintiff with a hand gun. Ms. Beech was present during the confrontation with

Mr. Barrios and would testify as to the conversation between plaintiff and Mr. Barrios during said incident.

6. In addition, Ventura County Sheriff's Officers Presiado and Valenciana, both of whom are citizens and residents of California, were with Mr. Barrios prior to his confrontation with plaintiff and would testify as to the amount of alcohol Mr. Barrios consumed that evening as well as the amount of alcohol he consumed at MARRIOTT on said evening.

7. Inspection of the subject location whether by the parties, their attorneys, their experts, the Court or a jury during the course of the trial, would necessarily take place in the District of Southern California. Also, in light of the presence of physical evidence and witnesses in Southern California, which is more than one hundred (100) miles from the Court and not subject to the subpoena power of this Court, see, F.R.C.P. 45(b)(2), transfer of this action to the United States District Court for the Southern District of California is absolutely mandated herein.

8. Plaintiff's residence in New Jersey is the only nexus between the accident and this District. The gravamen of this action concerns a local question concerning the safety and maintenance of premises within the State of California, rather than issues concerning New Jersey. Federal Courts have held that jurors in this district should not carry the burden of resolving matters that have no relevant interest to their community. Due to the paucity of connections between plaintiff's incident in New Jersey, the occurrence of this incident in California, the lack of adequate authority to subpoena important witnesses - some of whom are law enforcement officers in California - the presence of substantial evidence, and the convenience of having to conduct depositions for testimony in California, the interest of justice mandates that this Court exercise its

broad discretion and transfer this action to the United States District Court for the Southern District of California.

9. Moreover, regardless of venue, any Court hearing this action will apply the law of the State of California which differs from that of the State of New Jersey. As MARRIOTT demonstrates in the accompanying Memorandum of Law, Federal Courts have held that in such a situation it is preferred that an action proceed in a district in the same state as the applicable law.

10. The legal authority laid out in the accompanying Memorandum of Law mandates immediate transfer of venue of this matter to the United States District Court for the Southern District of California.

WHEREFORE, defendant, MARRIOTT INTERNATIONAL, INC. s/h/i/a LOS ANGELES AIRPORT MARRIOTT HOTEL, respectfully requests that this Court grant the within motion and forthwith transfer this matter to the United States District Court of the Southern District of California, together with such other and further relief as this Court may deem appropriate in the premises.

Dated: Hackensack, NJ
December 5, 2007

GARBARINI & SCHER, P.C.
Attorneys for Defendants
MARRIOTT INTERNATIONAL, INC.
s/h/i/a LOS ANGELES AIRPORT MARRIOTT
HOTEL

By: /s/
WILLIAM G. SCHER (WS 2891)
Court Plaza North
25 Main Street, Suite 600
Hackensack, NJ 07601-7025

Sworn to before me this
5TH day of December, 2007

/s/

GREGG D. WEINSTOCK
Attorney at Law
State of New Jersey

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK, NEW JERSEY

DAVID P. TARINO,

Docket No.: 07 CV 5505(JAG)(MCA)

Plaintiff,

-against-

ORDER

LOS ANGELES AIRPORT MARRIOTT HOTEL,

Defendant.

_____This matter having been opened to the Court by motion of GARBARINI & SCHER, P.C., attorneys for defendants, MARRIOTT INTERNATIONAL, INC. s/h/i/a LOS ANGELES AIRPORT MARRIOTT HOTEL and the Court having considered the papers submitted and the argument of counsel, and for good cause shown, it is hereby;

ORDERED, that defendants, MARRIOTT INTERNATIONAL, INC. s/h/i/a LOS ANGELES AIRPORT MARRIOTT HOTEL.s' motion is granted in its entirety and the action is transferred to the United States District Court for the Southern District of California and it is further;

ORDERED that the Clerk of this Court forward the contents of this Court's file to the Clerk of the Court of the United States District Court for the Southern District of California, and it is further;

ORDERED, that a copy of this Order shall be served upon all parties to this action within _____ days of the date hereof.

U.S.D.J.

CERTIFICATION

I hereby certify that today, December 5, 2007 , I caused the original of the within Notice of Motion, Affidavit in Support, Order, and Memorandum of Law, to be filed with the United States District Court, District of New Jersey, Martin Luther King, Jr. Federal Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101 by Electronic Mail.

I further certify that today I caused a copy of the aforesaid papers to be served via first class mail upon plaintiff, DAVID P. TARINO, 366 Sutton Avenue, Hackensack, NJ 07601

/s/
WILLIAM G. SCHER (WS 2891)